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Do I Have To Sell the Website I Created To My Former Employer?

[Kristie Prinz](#)

Q.

I have been the general manager of a small incorporated bar in California for 16 years. When I approached the owners with an idea for a website, they were not interested financially or otherwise and I have paid all fees for four years, Now that I have quit, they are demanding the website, first legal threat, then \$500. Do I have to sell?

-- John

A.

You would not have to sell the website you created to your former employer, unless it was created as a work for hire on behalf of that former employer.

Section 101 of the Copyright Act defines work for hire as follows:

1. a work prepared by an employee within the scope of his or her employment; or
2. a work specially ordered or commissioned for use as a contribution to a collective work, as a part of a motion picture or other audiovisual work, as a translation, as a supplementary work, as a compilation, as an instructional text, as a test, as answer material for a test, or as an atlas, if the parties expressly agree in a written instrument signed by them that the work shall be considered a work made for hire.

Thus, if this website were created by you while you were employed by the bar, during the course of your employment, then it would constitute a work for hire and be assignable to the former owners.

What constitutes being created "during the course of your employment"? Well, this may be a bit fuzzy and will likely be the issue at the heart of any dispute. The facts you have provided indicate that you approached the owners with the idea for this website and they were not interested, so you may very well have a good

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argument that this website was not created during the course of your employment for the bar and was therefore not a work for hire on behalf of the bar.

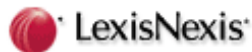
One question that comes to mind here: is there any other reason that the bar owners might think that they should own the website, such as any trademark issues that might complicate the fact pattern? If you are in any way using any trademarks of the bar on the website, then continued use of those trademarks may constitute trademark infringement if such use is not pursuant to a trademark license agreement with the bar owners, authorizing the use. Similarly, if the owners contributed any content, source code, or design elements to the website, their contributions could change this analysis.

However, if this is not a work for hire and there are no complicating factors to this issue, then the bar owners likely have no grounds to force you to transfer rights in the website. My advice is to consult with a litigator in your jurisdiction who has expertise in employment and copyright law to discuss the specific facts of your case. Such an attorney should be in a position to advise you on how best to respond to the bar owners.

Having addressed your rights in this case, I must say that I cannot help but question why you are completely unwilling to consider selling this website to the bar owners, in light of their apparent interest. Most business and website owners have a price at which they would be willing to "cash out" on their work. If you have a willing buyer interested in purchasing a business or an asset from you, which is in this case a website, perhaps you should explore whether there might be a price point and deal in which the sale would make sense to you. You may want to consult with an attorney in your jurisdiction specializing in acquisitions to explore what a good deal might look like, just to confirm that this really is not something you should look into further.

-- *Kristie Prinz*

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